

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statutes involved.....	2
Statement.....	2
Argument.....	4
Conclusion.....	6
Appendix.....	7

CITATIONS

Statutes:

Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 1113 (U. S. C., Title 26, Sec. 1672).....	8
Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 1103 (U. S. C., Title 26, Sec. 1672).....	7

Miscellaneous:

S. Rep. No. 665, 72d Cong., 1st Sess., p. 57.....	5
---	---

(1)



In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 652

FARMERS UNDERWRITERS ASSOCIATION, PETITIONER

v.

SCOTT CARTER, AS ADMINISTRATOR OF THE ESTATE
OF JOHN P. CARTER, DECEASED

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court did not deliver any opinion in this case, but its special findings of fact and conclusions of law may be found in the record (pp. 38-41). The opinion of the Circuit Court of Appeals (R. 58-64) is reported in 115 F. (2d) 302.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 28, 1940. (R. 65.) The petition for writ of certiorari was filed December 26,

1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Commissioner's registered letter mailed to the taxpayer before the schedule of rejection was signed, advising that its claim for refund was rejected, was a notice of disallowance of its claim for refund which initiated the running of the two-year period of limitation for suit provided by Section 3226 of the Revised Statutes, as amended by Section 1103 of the Revenue Act of 1932.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra*, pp. 7-8.

STATEMENT

On September 29, 1933, the taxpayer filed with the Collector of Internal Revenue at Los Angeles, its claim for refund of capital stock taxes, in the sum of \$480. (R. 22-24.)

On February 23, 1934, Guy T. Helvering, Commissioner, by Adelbert Christy, Acting Deputy Commissioner, mailed by registered mail to the taxpayer a letter dated February 23, 1934 (R. 27-28), which was received by it at Los Angeles, California, on February 27, 1934 (R. 17). This letter advised the taxpayer in no uncertain terms that its claim was rejected. (R. 28, 64.)

On February 28, 1934, the taxpayer mailed to the Commissioner a letter dated the same day, and signed by T. E. Leavey, as Vice President (R. 17), which acknowledged receipt of the notice that its claim for refund had been rejected (R. 29). The letter requested that the matter be referred to the General Counsel of the Bureau for his consideration and that the claim be reopened and allowed. (R. 33.)

On February 28, 1934, the Commissioner of Internal Revenue signed rejection schedule Number ST-Rej. 3399, on which the taxpayer's claim for refund, dated September 29, 1933, was listed. (R. 17-18.)

On May 5, 1934, Adelbert Christy, Acting Deputy Commissioner, mailed to the taxpayer a letter, dated on that date (R. 18), which stated that the Bureau's letter of February 23, 1934, had rejected the taxpayer's claim (R. 34), and declined the taxpayer's request that the matter be referred to the General Counsel of the Bureau because the question of rejection had been decided (R. 35-36). Suit to recover the tax was instituted on April 30, 1936 (R. 10, 62), more than two years after the Commissioner's first letter to the taxpayer, dated February 23, 1934, and more than two years from February 28, 1934, the date on which the Commissioner signed the rejection schedule upon which the taxpayer's claim for refund was listed (R. 17-18).

The trial court determined that no notice of disallowance of taxpayer's refund claim was mailed by the Commissioner to the taxpayer until May 5, 1934. It concluded that the letter of February 23, 1934, did not constitute a notice of disallowance, and that the action was not barred by Section 3226 of the Revised Statutes as amended. (R. 39.)

On appeal the Circuit Court of Appeals held that the letter dated February 23, 1934, advised the taxpayer in no uncertain terms that its claim was rejected, and that the letter fulfilled the requirements of the statute. The Circuit Court of Appeals reversed and remanded the case with instructions to dismiss the complaint. (R. 64.)

ARGUMENT

The statutory provisions here involved were enacted for the first time in 1932 when Congress by Section 1103 (a) of the Revenue Act of 1932, see Appendix, p. 7, *infra*, amended Section 3226 of the Revised Statutes. Those amendatory provisions forbid the bringing of a suit for refund "after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance" of the claim for refund.

The registered letter notifying petitioner of disallowance was mailed on February 23, 1934, and this suit was instituted on April 30, 1936, more than two years thereafter. Accordingly, the court below correctly decided that this suit was barred.

The petitioner contends, however, that the two-year period could not begin to run until the Commissioner had signed a "rejection schedule" and mailed notice *thereafter* to petitioner. And since the disallowance was not entered upon the rejection schedule until February 28, 1934, petitioner urges that the February 23, 1934, letter was ineffective to start the running of the period of limitations.

As noted by the court below (R. 63) there is no requirement whatever that the Commissioner sign a rejection schedule, and there is no statutory provision to the effect that the disallowance of a claim must be evidenced by an entry upon such a schedule.

Indeed, prior to the 1932 amendment, the statute had simply provided that the two-year period should run from the date of "disallowance." And since considerable uncertainty often arose as to just what was the date of "disallowance," the 1932 provisions were enacted for the express purpose of avoiding such confusion. See S. Rep. No. 665, 72d Cong., 1st Sess., p. 57.

The court below concluded (R. 64) that the letter dated February 23, 1934, fulfilled the requirements of the statute. That letter was sent by registered mail and stated specifically that the claim was rejected. That it was understood by both the taxpayer and the Commissioner to have constituted a rejection of the claim is shown by the taxpayer's letter of February 28, 1934, referring to the rejection of its claim (R. 29) and asking that it be re-

opened (R. 33), and the Commissioner's letter of May 5, 1934 (R. 34), in reply thereto.

The cases relied upon by petitioner (Pet. 5) as presenting a conflict all arose under statutory provisions prior to the 1932 amendment. At that time it was necessary to adopt some practical solution as to the determination of the date of disallowance under the earlier provisions. Accordingly, in those cases in which the Commissioner signed a rejection schedule the date of his signature was adopted. Under the new statute there is no occasion to refer to any rejection schedule or any other possible starting point for the running of the two-year period under the earlier statute; the time from which the statute runs is the mailing of the notice of disallowance.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions and no question of general importance is presented. The petition for writ of certiorari should, therefore, be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

SEWALL KEY,
JOHN A. GAGE,
Special Assistants to the Attorney General.

ANDERSON PAGE,
Attorney.

JANUARY 1941.

